

ORDINANCE No. 185523

Vacate a portion of NW Vaughn St west of NW 33<sup>rd</sup> Ave subject to certain conditions and reservations (Hearing; Ordinance; VAC-10076)

The City of Portland ordains:

Section 1. The Council finds:

1. On May 2, 2011, the Office of the City Auditor certified a petition for the vacation of a portion of NW Vaughn Street west of NW 33<sup>rd</sup> Avenue, with the petition initiated by Paul Marten and Christyne Marten, the owners of adjoining property.
2. The petition states that the reason for the vacation is to consolidate property for future development.
3. The vacation is in conformance with the City of Portland's Comprehensive Plan and is consistent with recommendations made by the City Engineer and Planning and Sustainability Commission, as provided in the City Engineer's Report, dated May 8, 2012 and on file with the Office of the City Auditor and the Bureau of Transportation.
4. In accordance with ORS 271.100, the Council fixed a time and place for public hearing before the Council; the Auditor published notice thereof, and posted notice in the areas proposed for vacation.
5. Other procedural requirements of ORS 271 have been complied with, and the Council having held a public hearing, finds no objections were made or filed hereto, and it is in the public interest that said street be vacated.
6. The Bureau's level of confidence in the cost estimates for this project is high.

NOW, THEREFORE, the Council directs:

- a. The street area as described on the attached Exhibit 1 and depicted on the attached Exhibit 2 is hereby vacated.
- b. The vacation of the above-described street area is granted subject to the following conditions and reservations:
  1. The Petitioner will permanently close the portion of NW Vaughn Street to be vacated as shown on Exhibit 1, and pay all costs to delineate the vacation area by constructing a curb and sidewalk or driveway, in accordance with the requirements of the City Engineer.

- i) To ensure the completion of the required street improvements, the Petitioner shall provide to the City Engineer, Street Systems Management Section, a performance guarantee in the form of a surety bond, letter of credit, set-aside account, cash, or other form of surety, subject to approval by the City Attorney. The Petitioner acknowledges that the performance guarantee indicated is a preliminary estimate subject to change, and agrees to provide additional guarantee and/or fees as required by the City Engineer.
  - ii) The Petitioner will authorize the City to complete the required street improvements at the Petitioner's cost, in the event that the City Engineer, at his sole discretion, determines that the improvements are not being made as required in a reasonable time.
  - iii) Upon completion of the required improvements by the Petitioner, and acceptance by the City Engineer, the Petitioner shall guarantee maintenance of the improvements for two (2) years following the date of project acceptance. The maintenance guarantee may be satisfied by the performance guarantee, or by substitution of other surety acceptable to the City Attorney and equal to 20% of the performance guarantee. Upon acceptance by the City of a 20% maintenance guarantee, the street improvements performance guarantee will be released.
  - iv) Prior to the issuance of a Certificate of Completion by the City Engineer, fees collected by the City in association with street closure work will be reconciled with actual City costs, with Petitioner to receive from or pay to the City the net difference. In the event of non-payment by the Petitioner, the street improvement performance bond will be used to reimburse City costs. Use of the performance bond by the City will not preclude the City from billing to and collecting from the Petitioner those costs incurred by the City that were in excess of the performance bond.
2. The Water Bureau owns and maintains certain improvements within the street area to be vacated. As a condition of street vacation approval, the Petitioner will pay the costs to relocate the public water facilities (main, meter, blow-off, etc.) out of the vacation area. The Petitioner will also provide a utility plan that indicates the location and point of connection of the private irrigation in the street median area. The point of connection must be behind the water meter (on the property side of the meter) with a backflow device and control box on private property to conform to City code. The Water Bureau will complete the work within a reasonable period of time after receiving payment from the Petitioner. The Petitioner, and petitioner's successors and assigns, will agree to accept ownership of any abandoned facilities in the vacated street area and will waive any claims of any nature that may arise in connection with the existence of such facilities or the city's prior use of those facilities.

3. In the event that additional processing requirements exceed current projections, Petitioner may be required to pay additional processing costs to the City prior to the Street Vacation Ordinance being recorded.
4. In accordance with ORS 271.120 and City of Portland policy, the street vacation ordinance shall not cause or require the removal or abandonment of any sewer, water or gas main, conduit of any kind, wire, pole or thing used, or intended to be used, for any public service, including, but not limited to those identified by PGE. The ordinance will reserve an easement for the owner of any such utility or thing to maintain, continue, repair, reconstruct, renew, replace, rebuild, and/or enlarge any and all such thing; that no building or structure of any kind shall be built or erected within a distance of ten (10) feet from the centerline of any such utility, except with the prior written consent of the City Engineer and the owner of the utility and that any and all contemplated building plans in said vacated area shall be submitted for approval to the City Engineer and to the Director of the Bureau of Development Services, to the end that such construction may be so adjusted with reference to all public utilities in said areas as to cause a minimum of danger or inconvenience to the public and to the owner of such utility and to protect and preserve the same as presently constructed or hereinafter reconstructed, renewed, replaced and/or enlarged. Removal or relocation of existing utilities in the street vacation area will require written agreements between the Petitioner and owner(s) of the utilities.
5. Notwithstanding b4 and except for b2, this Ordinance will serve as a full release of City interests in the street vacation area and will provide City Bureaus with the authority necessary to take all other legal actions as may be reasonably necessary (including the issuance of quitclaim deeds acknowledging the release of any interests) to achieve this intent.
6. City costs associated with processing the street vacation petition shall be paid in full before the City records this Ordinance.
7. In the event the Petitioner fails to fully comply with the above conditions within one year of Council adopting this Ordinance, City Council may repeal the Ordinance at its sole discretion.

Section 2. Petitioner shall file with the City Auditor, in form approved by the City Attorney, a document in writing, accepting the terms and conditions of the Ordinance.

Section 3. Notice is given that the street vacation will not be effective until a certified copy of the vacating Ordinance has been recorded by the City in Multnomah County Deed Records. Prerequisites to recording the vacating Ordinance are that 30 days have passed after final Council passage of the Ordinance, that all conditions of the vacating Ordinance have been met, and that all vacation costs have been paid.

Section 4. After the prerequisites to recording the Ordinance have been met, the City Auditor shall return a certified copy of this Ordinance and the acceptance thereof, to the Right-of-Way Acquisition Section, Bureau of Transportation, which shall, at the expense of the Petitioner, file with the recorder, the assessor, and the surveyor of the county in which said property is located, the certified copy of this Ordinance and the acceptance, and any map, plat or other record which may be required by law. The Right-of-Way Acquisition Section shall return the recorded Ordinance to the Auditor.

MAY 22 2012 10:00 AM

*[Faint handwritten signature]*

Passed by the Council, **JUL 25 2012**

Mayor Sam Adams  
Prepared by: Karl N. Arruda: slg  
Date Prepared: June 25, 2012  
R/W # 7321

**LaVonne Griffin-Valade**  
Auditor of the City of Portland

By *Gayla Jennings*

Deputy

Agenda No. **185523**  
**ORDINANCE NO.** 185523  
Title

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<p><b>INTRODUCED BY</b> Commissioner/Auditor: <b>MAYOR SAM ADAMS</b></p>	<p>CLERK USE: DATE FILED <u>JUL 13 2012</u></p>
<p><b>COMMISSIONER APPROVAL</b> <i>OK'd for Mayor Adams</i> Mayor - Finance and Administration - Adams</p> <p>Position 1/Utilities - Fritz</p> <p>Position 2/Works - Fish</p> <p>Position 3/Affairs - Saltzman</p> <p>Position 4/Safety - Leonard</p>	<p>LaVonne Griffin-Valade Auditor of the City of Portland</p> <p>By: <u><i>[Signature]</i></u> Deputy</p>
<p><b>BUREAU APPROVAL</b> Bureau: Bureau of Transportation Group Manager: Greg Jones Development &amp; Capital Program Other:</p> <p>Prepared by: Karl Arruda:slg <i>slg</i> Date Prepared: June 25, 2012</p> <p>Financial Impact &amp; Public Involvement Statement Completed <input checked="" type="checkbox"/> Amends Budget <input type="checkbox"/> Not Required <input type="checkbox"/></p> <p>Portland Policy Document If "Yes" requires City Policy paragraph stated in document. Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p> <p>Council Meeting Date <b>July 18, 2012</b></p>	<p><b>ACTION TAKEN:</b></p> <p><b>JUL 18 2012 PASSED TO SECOND READING JUL 25 2012 9:30 A.M.</b></p> <p><i>See A. Walker on behalf of Dave McEldowney</i></p>
<p><b>City Attorney Approval</b></p>	

**AGENDA**

**TIME CERTAIN**   
Start time: \_\_\_\_\_

**Total amount of time needed:** \_\_\_\_\_  
(for presentation, testimony and discussion)

**CONSENT**

**REGULAR**   
**Total amount of time needed: 5 minutes**  
(for presentation, testimony and discussion)

FOUR-FIFTHS AGENDA	COMMISSIONERS VOTED AS FOLLOWS:	
	YEAS	NAYS
1. Fritz	✓	
2. Fish	✓	
3. Saltzman	✓	
4. Leonard	✓	
Adams	✓	